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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 359/2019**
JAMSHED & ORS. Petitioners
Through: Mr. R.K. Gupta, Adv.

versus

STATE & ORS. Respondents
Through: Ms. Meenakshi Dahiya, APP for State
with SI Sashikant, PS Geeta Colony.
Ms. Shantha Devi Raman, Adv. for
R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

05.03.2020

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Vide the present petition, the petitioners seek quashing of the FIR No.382/2014, PS Geeta Colony registered under Sections 498A/406/34 of the Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the parties and that all disputes between them have since been resolved and the marriage between the petitioner no. 1 and the respondent no.2 has been dissolved and no useful purpose would be served by the continuation of the proceedings in relation to the FIR in question.

The Investigating Officer of the case has identified the petitioners present today in Court as being the accused arrayed in the FIR in question and has also identified respondent no.2 present in Court today as being the complainant of the said FIR.

During the course of the present proceedings when the matter had

been taken up on 22.10.2019, in view of the factum that the mediation settlement dated 25.05.2018 vide clause 2 thereof, which reads to the effect:

“2, It is agreed between the parties that the husband shall pay Rs.2,15,000/- (Rs. Two Lakh Fifteen Thousand only) to the wife towards full and final settlement of all her claims qua the marriage including Mehar amount, Iddat expenses, istridhan, permanent alimony and maintenance (present, past and future) for her as well as towards the maintenance of minor son Faijan.”

whereby it had been agreed between the parties to the effect that the total settled sum of Rs.2,15,000/- that had been agreed to be paid by the petitioner no.1 to the respondent no.2 was towards her full and final settlement of all her claims qua the marriage including Mehar amount, Iddat expenses, istridhan, permanent alimony and maintenance (present, past and future) for her as well as towards the maintenance of minor son Faijan. The said terms not being in consonance with law as laid down by the Hon'ble Supreme Court in Civil Appeal 4031-4032/2019 arising out of SLP (C) Nos.32868-32869/2018 titled as ***Ganesh Vs. Sudhirkumar Shrivastava & Ors.*** vide the verdict dated 22.04.2019 as adhered to by this Court in ***Rakesh Jain & Ors. vs. State & Anr.*** in CRL.M.C. 2935/2019 dated 06.09.2019, the petitioners were apprised of the same. Furthermore, the State was directed to verify the factum of divorce between petitioner no.1 and the respondent no.2. Pursuant to the said proceedings, both the petitioner no.1 and the respondent no.2 have placed on record their affidavits stating to the effect that the terms of the settlement referred to hereinabove vide clause 2 in relation to the sum of Rs.2,15,000/- i.e. the agreed amount relate only to the rights of the respondent no.2 and that the rights of the minor child Faijan born of the

wedlock between the petitioner no. 1 and the respondent no.2 have thus not been compromised thereby and that there is no embargo to the minor child seeking his claims against the petitioners in accordance with law qua maintenance of otherwise.

To similar effect is the statement made by the petitioner no.1 on examination by the in reply to specific Court queries and he has also affirmed having thus signed his affidavit Ex.CW2/B after understanding its contents.

The respondent no.2 has produced her original proof of identity, copy of which is on the record as Ex.CW3/A. The respondent no.2 in her examination on oath by the Court has affirmed having signed her affidavit Ex.CW3/B & Ex.CW3/C and the settlement arrived at between the her and the petitioner nos.1 & 2 Ex.CW2/C voluntarily of her own accord without any duress, coercion or pressure from any quarter.

The respondent no.2 has further stated that pursuant to the settlement arrived at between her and the petitioner no.1, the marriage between her and the petitioner no.1 has since been dissolved under Section 2 of the Dissolution of Muslim Marriage Act, 1939 vide a decree dated 22.02.2020 in ML No.03/2019 of the Court of the Principal Judge (East), Family Court, KKD Courts, certified copy of which is on the record as Ex.CW3/D.

She has further stated that in terms of the settlement arrived at between her and the petitioner nos.1 & 2, a total sum of Rs.2,15,000/- has been agreed to be paid to her by the petitioner no.1, of which, a sum of Rs.1,15,000/- has already been received by her previously and the balance sum of Rs.1 lakh has now been handed over to her by the petitioner no.1

vide demand drafts bearing no.728632 revalidated on 13.01.2020 and 728638 revalidated on 13.01.2020 both for a sum of Rs.49,500/- in her favour both drawn on the UCO Bank, the copies of the are on the record as Ex.CW2/E and Ex.CW2/F respectively and the remaining balance of Rs.1,000/- has been paid to her by the petitioner no.1 in cash today in Court and that there are no claims of hers left against the petitioners now.

She has further stated that in view of the settlement arrived at between her and the petitioners, she does not oppose the prayer made by the petitioners seeking the quashing of the FIR No.382/2014, PS Geeta Colony registered under Sections 498A/406/34 of the Indian Penal Code, 1860 nor does she want the petitioners to be punished in relation thereto. She has further stated that she is not literate and she works in creche and that she has made her statement voluntarily after understanding the implications thereof.

There appears no reason to disbelieve the statement made by the respondent no.2 that she has arrived at a settlement with the petitioner voluntarily in as much as the FIR in question has emanated from a matrimonial discord which has since been resolved vide dissolution of the marriage between the respondent no.2 and the petitioner no.1, it is considered appropriate to put a quietus to the litigation and disputes between the parties for maintenance of peace and harmony between them as also for the well being of the respondent no.2, in terms of the verdict of the Hon'ble Supreme Court in ***Narender Singh & Ors. V. State of Punjab***; (2014) 6 SCC 466 wherein it has been observed vide paragraph 31(IV) to the effect:

“31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to

the settlement between the parties and exercising its power under [Section 482](#) of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I)

(II)

(III)

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

.....”

and in view of the observations of the Hon'ble Supreme Court in ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303, to the effect : -

*“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. **However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony,***

particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.” [Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]”

and in view of the verdict of the Hon’ble Supreme Court in *Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr.* (2013) 4 SCC 58, to the effect : -

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order

to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed....”

(emphasis supplied),

the FIR No.382/2014, PS Geeta Colony registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioners are quashed.

The petition is disposed of.

ANU MALHOTRA, J

MARCH 05, 2020

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IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 359/2019

JAMSHED & ORS.Vs. STATE & ORS

05.03.2020

CW-1 SI Sashikant, PS Geeta Colony.

ON S.A.

I identify the petitioner no.1 Mr. Jamshed, petitioner no.2 Mrs. Shakila @ Sado, petitioner no.3 Mr. Mohd. Imran, petitioner no.4 Mr. Enam and petitioner no.5 Ms. Nussarat as being the accused arrayed in the FIR No.382/2014, PS Geeta Colony registered under Sections 498A/406/3 of the Indian Penal Code, 1860. I identify the respondent no.2 Ms. Shahin as being the complainant of the said FIR.

RO & AC

05.03.2020

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 359/2019

JAMSHED & ORS.Vs. STATE & ORS

05.03.2020

CW-2 Mr. Jamshed, s/o Islamuddin, aged 39 years, r/o 181, Majboor Nagar, J.J. Camp, IP Extension, Delhi.

I have brought my original proof of identity, copy of which is on the record as Ex.CW2/A. My affidavit dated 03.03.2020 bears my signatures thereon at points A & B thereon on Ex.CW2/B. I understand that the rights of the minor child Faijan born of the wedlock between me and the respondent no.2 had not been concluded in terms of the mediation settlement dated 25.05.2018 arrived at between me and the respondent no.2 at the Delhi Mediation Centre, KKD Courts, New Delhi, which bears my signatures as visible at point A thereon on Ex.CW2/C and that the minor child Faijan would be entitled to seek his claims against me qua maintenance or otherwise. I have signed all these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter.

I have made my statement voluntarily of my own accord without any duress, coercion or pressure from any quarter after understanding the implications thereof.

RO & AC
05.03.2020

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 359/2019

JAMSHED & ORS.Vs. STATE & ORS

05.03.2020

CW-3 Ms. Shahin, d/o late Mohd. Layeek, aged 30 years, r/o 112, Majboor Nagar, JJ Camp, Delhi.

I have brought my original Aadhar Card, copy of which is on the record as Ex.CW3/A. My affidavits bear my signatures on each at points A & B thereon on Ex.CW3/B & EX.CW3/C. The mediation settlement dated 25.05.2018 arrived at between me and the petitioner nos.1 & 2 bears my signatures as visible at point B thereon on Ex.CW2/C. I have signed all these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter.

Pursuant to the settlement arrived at between me and the petitioner no.1, the marriage between me and the petitioner no.1 has since been dissolved under Section 2 of the Dissolution of Muslim Marriage Act, 1939 vide a decree dated 22.02.2020 in ML No.03/2019 of the Court of the Principal Judge (East), Family Court, KKD Courts, certified copy of which is on the record as Ex.CW3/D.

In terms of the settlement arrived at between me and the petitioner nos.1 & 2, a total sum of Rs.2,15,000/- has been agreed to be paid to me by the petitioner no.1, of which, a sum of Rs.1,15,000/- has already been received by me previously and the balance sum of Rs.1 lakh has now been handed over to me by the petitioner no.1 vide demand drafts bearing No.728632 revalidated on 13.01.2020 and 728638 revalidated on 13.01.2020 both for a sum of Rs.49,500/- in my favour both drawn on the UCO Bank,

the copies of the same are on the record as Ex.CW2/E and Ex.CW2/F

respectively and the remaining balance of Rs.1,000/- has been paid to me by the petitioner no. 1 in cash today in Court. There are no claims of mine left against the petitioners now.

In view of the settlement arrived at between me and the petitioners, I do not oppose the prayer made by the petitioners seeking the quashing of the FIR No.382/2014, PS Geeta Colony registered under Sections 498A/406/34 of the Indian Penal Code, 1860 nor do I want the petitioners to be punished in relation thereto.

I am not literate and I work in a creche.

I have made my statement voluntarily of my own accord without any duress, coercion or pressure from any quarter after understanding the implications thereof.

RO & AC
05.03.2020

ANU MALHOTRA, J